

LCNT/126067
Serial No. 10/723,591
Page 7 of 11

Remarks

Claims 1-20 are pending in the application.

Claims 7, 14, 18 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 1-6, 8-13, 15-17 and 19 are rejected under 35 U.S.C. §102(e) as being anticipated by Kim et al. (US 2004/0131026, hereinafter "Kim").

By this amendment, Applicants have amended claims 9-14 to correct inadvertent errors in the preambles, in order to provide consistency with independent claim 8. Claim 15 has been amended to clarify Applicants' invention. New dependent claim 21 has been added. The subject matter of claim 21 is fully supported by the original specification. Thus, no new matter has been added as a result of these amendments.

Each of the various rejections and objections are overcome by amendments that are made to the specification, drawing, and/or claims, as well as, or in the alternative, by various arguments that are presented.

Any amendments to any claim for reasons other than as expressly recited herein as being for the purpose of distinguishing such claim from known prior art are not being made with an intent to change in any way the literal scope of such claims or the range of equivalents for such claims. They are being made simply to present language that is better in conformance with the form requirements of Title 35 of the United States Code or is simply clearer and easier to understand than the originally presented language. Any amendments to any claim expressly made in order to distinguish such claim from known prior art are being made only with an intent to change the literal scope of such claim in the most minimal way, i.e., to just avoid the prior art in a way that leaves the claim novel and not obvious in view of the cited prior art, and no equivalent of any subject matter remaining in the claim is intended to be surrendered.

Also, since a dependent claim inherently includes the recitations of the claim or chain of claims from which it depends, it is submitted that the scope and content of any dependent claims that have been herein rewritten in independent form is exactly the same as the scope and content of those claims prior to having been rewritten in independent

LCNT/126067
Serial No. 10/723,591
Page 8 of 11

form. That is, although by convention such rewritten claims are labeled herein as having been "amended," it is submitted that only the format, and not the content, of these claims has been changed. This is true whether a dependent claim has been rewritten to expressly include the limitations of those claims on which it formerly depended or whether an independent claim has been rewriting to include the limitations of claims that previously depended from it. Thus, by such rewriting no equivalent of any subject matter of the original dependent claim is intended to be surrendered. If the Examiner is of a different view, he is respectfully requested to so indicate.

Objection to Claims 7, 14, 18 and 20

Claims 7, 14, 18 and 20 are objected to, but were indicated to be allowable if rewritten in independent form.

Applicants thank Examiner for indicating the allowable subject matter in these claims. However, as set forth below, independent claims 1, 8 and 15 are not anticipated by Kim, and thus, patentable under 35 U.S.C. §102. Thus, claims 7, 14, 18 and 20, which depend from claims 1, 8 and 15 respectively, are also patentable under 35 U.S.C. §102.

Therefore, Applicants respectfully request that the rejection be withdrawn.

Rejection Under 35 U.S.C. §102

Claims 1-6, 8-13, 15-17 and 19 are rejected under 35 U.S.C. §102(e) as being anticipated by Kim. The rejection is traversed.

Kim teaches a method of providing multimedia broadcast/multicast service (MBMS) in which the transmission scheme, e.g., point-to-point (PTP) or point-to-multipoint (PTM), within a cell is determined according to both the number of user equipments in the cell and the total transmitted code power reported by a node for that cell. Depending on whether one of these parameters exceeds certain respective thresholds, the transmission scheme is switched from PTP to PTM, or vice versa (see, e.g., Abstract, paragraphs 43-44, 47, 61-63).

The Office Action interprets Kim as teaching a first subset and a second subset of users because Kim's transmission scheme is determined based on whether the number of users is: 1) smaller than a threshold, or 2) larger than or equal to a threshold. The Office

LCNT/126067
Serial No. 10/723,591
Page 9 of 11.

Action thus correlates the two scenarios in Kim with the first and second subsets of users in Applicants' invention. Applicants respectfully disagree.

Specifically, the number of users referred to in Kim - whether smaller or larger than the threshold, is still the total number of users within a cell, i.e., the entire group of users. There is no teaching or suggestion in Kim regarding two subsets of users within the cell, or determining the two subsets of users based on the measured power ratios.

As such, Kim does not teach: "determining a first subset of the plurality of users and a second subset of the plurality of users based upon the measured power ratios; and delivering said message to the first subset of the plurality of users via a first transmission scheme", as recited in Applicants' claim 1.

Since Kim fails to disclose each and every element as provided in claim 1, claim 1 is not anticipated by Kim, and thus, patentable under 35 U.S.C. §102(e).

Independent claim 8 recites relevant limitations similar to those recited in claim 1 and, therefore, for at least the same reasons discussed above with respect to claim 1, claim 8 is also allowable over Kim under 35 U.S.C. §102(e).

Independent claim 15 has been amended to further clarify Applicants' invention, and recites, in part: "said IMM transmitting said messages via two different transmission schemes via two different transmission schemes to two subsets of the plurality of users according to the power transmission requirement information."

Since Kim teaches only transmitting either in PTP or PTM scheme (e.g., switching from PTP to PTM, depending on the result of measured vs. threshold comparison) to all users, but not using both schemes to transmit to different subsets of users, Applicants' claim 15 is not anticipated by Kim. Therefore, claim 15 is thus allowable under 35 U.S.C. §102(e).

Since all of the dependent claims that depend from the independent claims include all the limitations of the respective independent claim from which they ultimately depend, each such dependent claim is also allowable over Kim under 35 U.S.C. §102.

As such, claims 1-6, 8-13, 15-17 and 19 are patentable under 35 U.S.C. §102. As such, the rejection should be withdrawn.

LCNT/126067
Serial No. 10/723,591
Page 10 of 11

New Claim

New claim 21, which depends from claim 1, has been added. The subject matter of claim 21 is supported by the original specification, e.g., p. 7, line 31 to p. 8, line 2. Thus, no new matter has been added in this new claim. Since independent claim 1 is not anticipated by Kim, claim 21 is also patentable under 35 U.S.C. §102.

Secondary References

The secondary references made of record are noted. However, it is believed that the secondary references are no more pertinent to Applicants' disclosure than the primary references cited in the Office Action. Therefore, Applicants believe that a detailed discussion of the secondary references is not necessary for a full and complete response to this Office Action.

LCNT/126067
Serial No. 10/723,591
Page 11 of 11

Conclusion

It is respectfully submitted that the Office Action's rejections have been overcome and that this application is now in condition for allowance. Reconsideration and allowance are, therefore, respectfully solicited.

If, however, the Examiner still believes that there are unresolved issues, the Examiner is invited to call Wan Yee Cheung (732) 383-1405 or Eamon Wall at (732) 530-9404 so that arrangements may be made to discuss and resolve any such issues.

Respectfully submitted,

Dated: 3/27/07



Eamon J. Wall
Registration No. 39,414
Attorney for Applicants

PATTERSON & SHERIDAN, LLP
595 Shrewsbury Avenue, Suite 100
Shrewsbury, New Jersey 07702
Telephone: 732-530-9404
Facsimile: 732-530-9808